

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

Bakko Aviation, LLC,

Civil No. 16-742 (DWF/LIB)

Plaintiff,

v.

**ORDER**

KK Air, LLC and Justin Smith,

Defendants.

This matter came before the Court on Plaintiff's application for entry of a default judgment against Defendants, KK Air, LLC and Justin Smith, under Rule 55(b)(2) of the Federal Rules of Civil Procedure. (Doc. No. 14.) The Complaint in this matter was filed on March 23, 2016. (Doc. No. 1.) The Defendants were served on July 22, 2016, with Justin Smith being served as both an individual and as agent of KK Air, LLC. (See Doc. Nos. 9, 10.) Both Defendants failed to plead or otherwise defend the action within the time permitted following service, and a Clerk's Entry of Default was filed on August 29, 2016. (Doc. No. 13.) On September 6, 2016, Plaintiff filed a Motion for Default Judgment, (Doc. No. 14), and a hearing on this motion was set for November 4, 2016, (Doc. No. 16).

On November 3, 2016, Defendant Justin Smith submitted via e-mail to the Court a *pro se* Motion to Dismiss for Lack of Personal Jurisdiction and for Failure to State a Claim Upon Which Relief Can Be Granted. This motion was filed on the docket on November 4, 2016. (Doc. No. 19.) The Court held the scheduled hearing on Plaintiff's

Motion for Default Judgment on November 4, 2016, and counsel for Plaintiff appeared.

Neither Defendant made an appearance. (Doc. No. 20.)

Default judgments are disfavored by the Court, particularly when there is a question regarding the Court's ability to exercise jurisdiction. In light of Defendant Justin Smith's submission including a challenge to the Court's jurisdiction, the Court will permit Defendants to proceed in defending this matter. However, Defendant Justin Smith made no attempt to contact this Court or otherwise appear up until one day prior to the hearing in this matter. Notwithstanding his status as a *pro se* litigant, the Court cannot condone such untimeliness and apparent disregard for court rules.

Because Defendant Justin Smith's behavior caused Plaintiff to pursue its default motion and incur the associated fees, the Court will condition Defendant Justin Smith's ability to defend this action upon the payment of Plaintiff's fees and costs incurred from the date this lawsuit was filed up to and including the November 4, 2016 motion hearing. Based upon the submissions before the Court, and the Court being otherwise duly advised in the premises, **IT IS HEREBY ORDERED** that:

1. Defendant Justin Smith is ordered to pay Plaintiff's incurred attorney fees and costs associated with bringing the Motion for Default Judgment in the amount of \$6,662.44 within thirty days of this Order.
2. The Court reserves ruling on Defendant Justin Smith's Motion to Dismiss for Lack of Personal Jurisdiction and for Failure to State a Claim Upon Which Relief Can Be Granted (Doc. No. 19). The Court's imposition of a hearing date and briefing

schedule associated with this motion is stayed pending Defendant Justin Smith's payment of Plaintiff's incurred fees and costs.

3. The Court reserves ruling on Plaintiff's Motion for Default Judgment (Doc. No. 14) as to both Defendant Justin Smith and Defendant KK Air, LLC. The Court reserves the right to request additional written submissions or further argument from the parties on this motion.

Dated: November 17, 2016

s/Donovan W. Frank  
DONOVAN W. FRANK  
United States District Judge